are made under the assumption that greater candidate access to television is a desirable objective and that such increased access will have positive effects on the political discourse of the nation.

Currently, television broadcasters are required to provide equal access to candidates in political campaigns. If they provide airtime to one candidate, then they must provide equal time to the opposition candidate. 47 U.S.C.A. § 315(a). This rule is subject to various exceptions such as coverage of a candidate in a bona fide news story. Additionally, the rates that broadcasters can charge political candidates are limited. 47 U.S.C.A. § 315(b). I am not aware of any proposal to refine or eliminate the equal access provision. Instead, the majority of reform efforts focus on charging candidates for airtime. Specifically, whether candidates for public office should be charged for use of the public airwaves at all. The present system, so the argument goes, favors the well-financed candidate at the expense of underfunded or marginal candidates. As a result, there have been numerous proposals to level the playing field by providing free airtime to candidates. The challenge, as I see it, is how to provide free airtime in such a way that will reasonably guarantee that the political discourse is enhanced. Free airtime to deliver negative attack ads do not enhance political discourse. Nor, at the other extreme, do political ads that merely extol the qualities and patriotism of the candidate without addressing the issues.

There are two constants in political campaigns whether on the local, state, or national level. The first constant is that the best way to judge the relative strengths and weaknesses of the candidates is to have the candidates debate the issues. People just naturally like to comparison shop before deciding on a purchase. In this respect, choosing a candidate for public office is no different than choosing a personal computer or a washing machine. "[T]he ultimate good desired is better

reached by free trade in ideas . . . the best test of truth is the power of the thought to get itself accepted in the competition of the market." Abrams v. United States, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). Justice Holmes' celebrated "marketplace of ideas" is just as applicable, if not more applicable, to political campaigns as any other area of free speech. As is apparent to anyone who has witnessed a political campaign in recent years, candidates will not address the issues unless forced to, and sometimes not even then. If left to their own devices, candidates will produce an endless parade of advertisements attacking their opponent or praising their own character. However, a debate forces candidates to address the issues, or at least a debate comes closest to forcing candidates to address the issues than anything else short of the rack or sodium pentothal. Therefore, public, contested political debates enhance political discourse, and should be encouraged as much as possible.

Which brings us to the second constant in political campaigns. The front-runner will do everything in his or her power to avoid a debate on the issues because he or she has everything to lose and nothing to gain. If forced to debate, the front-runner typically will demand concessions for agreeing to participate. These concessions include, but are not limited to, location, length of debate, format of debate, scope of questions, time provided for answers, and types of questions. Conversely, those candidates who trail in the polls will struggle mightily to force a debate because they have everything to gain and nothing to lose by debating the front runner. These candidates will accede to almost any conditions demanded by the front-runner. The result is fewer debates, or debates so limited in scope and format as to not deserve to be called a debate. Consequently, the best forum available to enhance political discourse and educate the voting public is seldom utilized.

The dilemma is clear. The public airwaves, whether provided free of charge or purchased, will be used by candidates in ways that do not enhance political discourse. Debates, the best available forum for enhancing political discourse, are seldom used, or used under less than optimal conditions. Broadcasters can not regulate the content of political commercials, even if the airtime is provided free of charge. Therefore, we can not force candidates to stop running negative ads. Furthermore, a candidate can not be required to participate in a debate. One possible solution to both problems is to exchange airtime for participation in political debates. Candidates who participate in debates will receive free airtime on a pre-determined schedule. For example, a candidate who participates in a debate will receive five minutes of free airtime each night between 5:00 p.m. and 11:35 p.m. for a specified period of time. Broadcasters will provide additional free airtime for each subsequent debate in which a candidate participates. Under this proposal everybody wins. Broadcasters fulfill part their public interest obligation, candidates receive free airtime, which they are free to utilize as they wish, and the public gains a greater understanding of the various candidates' views on the issues.

Of course such a plan has the potential to overwhelm individual broadcasters and convert them into virtual C-SPAN clones. All politics, all of the time. If individual broadcasters are required to provide free airtime to every candidate for political office from dog catcher to President of the United States, then there will be very little time remaining for other programming. Obviously, some limits are necessary. Perhaps only campaigns for certain public offices will be eligible for free airtime, or the amount of free airtime will be limited. The goal is to increase participation in debates and thereby improve political discourse, not to provide free airtime to every candidate for public office.

In addition, the program outlined above may be subject to attack on First Amendment grounds. Inevitably a situation will arise in which a candidate for public office will pay for airtime provided free to other candidates for the same office. The resolution of such disputes will, of course, be dependent upon the facts of each case, and it is impossible to anticipate every situation that may arise. Suffice it to say that if the proposed rule is drafted carefully so that every candidate for a given public office is afforded the same opportunity to participate in a given debate and thereby receive free airtime, then such incidents will be rare.

Enhancing political discourse, promoting democracy, and educating the voting public are important and worthy goals for broadcasters, and other mass media, to undertake, voluntarily or otherwise. Furthermore, it is incumbent upon government to promote these goals whenever and however possible. Having said that, it is important to stress that stating an objective is not the same as accomplishing it. Vague mandates and empty platitudes do not make sound, or workable, policy. Providing a forum for political discourse is ineffectual unless the forum is used for political discourse, and not for ad hominem attacks, or self-aggrandizing political puffery. However, regulating the content of speech is as abhorrent and wrong-headed as censoring speech in its entirety. But if candidates for public office are allowed to use the public airwaves for political discourse, then surely it is possible to promulgate simple, common sense rules to ensure that at least some political discourse occurs. I believe that exchanging airtime for participation in debates is such a rule.

Respectfully,

Darren Mitchell

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

RE: Public Comments on Public Interest Obligations of Television Broadcast Licensers, MM Docket No. 99-360, FCC 99-390

Introduction and Background

This comment is in response to the notice of proposed rulemaking, published January 26, 2000, with summary of the Commission's Notice of Inquiry, FCC 99-390, adopted December 15, 1999. Notice of Proposed Rulemaking, 65 Fed. Reg. 4211-01 (Jan. 26, 2000). The FCC noted that it was seeking comment on how broadcasters can best serve the public interest as they transition to digital television transmission technology.

As a second year law student at the University of Tennessee, I will tailor this comment specifically as a general legal and public policy response to the Commission's request for discussion regarding the extent that broadcasters' public interest obligations can be refined to promote and enhance political discourse. There have been legislative proposals, highlighted in the Notice of Inquiry supplement to the Notice of Proposed Rulemaking at 4216, and include providing qualified political candidates with limited amounts of free access to the airwaves as part of broader campaign finance reforms.[1]

In effect, I contend that the Commission has constitutional authority to regulate broadcasters' dissemination of political information. With such authority, the FCC should embrace *mandatory* measures, including free air time to candidates of greater duration than the five minute "sound bites" proposed by the Advisory Committee on Public Interest Obligations of Television Broadcasters ("PIAC").

[1] See S. 25, 105th Cong., 1st. Sess. 102 (1997) (providing qualified Senate candidates with 30 minutes of free broadcast time except if there are more than two candidates, in which case all the candidates together get a total of 60 minutes free time).

Constitutionality of FCC Regulation of Political Discourse

In the FCC's adoption of Notice of Inquiry in December 1999, FCC 99-390, Commissioner Harold Furchtgott-Roth chastised the Commission for its "misguided application[] of our public interest authority" to improve political discourse through "free air time" to political candidates. He suggests that such proposals exceed the agency's authority in that they may be unconstitutional and simply bad policy because such a proposal would unduly burden the industry by imposing a hidden tax.[2]

Congress consistently has required that broadcast licenses be assigned and renewed on the basis of the public interest, convenience, and necessity.[3] Broadcasters, therefore, are public trustees with a fiduciary obligation to serve the public through their programming. As Chief Justice Burger wrote, then acting as judge for the D.C. Circuit, a "broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations....[A] broadcast license is a public trust subject to termination for breach of duty."[4]

Although every broadcast television and radio station in this country operates under these valuable licenses to use this public property, broadcasters are not required to pay for them. In response, the Commission is delegated the authority to supervise "the

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[2] FCC Notice of Inquiry, FCC 99-390, Dec. 20, 1999 at 65-80.
[3] FCC Notice of Inquiry, FCC 99-390, Dec. 20, 1999; 47 U.S.C.A. 307(c)(1).
[4] Charles W. Logan, Jr. Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation, 85 Calif. L. Rev. 1687 (Dec. 1997) (quoting Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1003 (D.C. Cir. 1966))

traffic" of the communications airwaves.[5] The statutory public-interest mandate "puts upon the Commission the burden of determining the composition of that traffic."[6]

While the Commission has eliminated a number of programming rules, broadcasters still must affirmatively seek to promote "public interest" programming. Broadcasters have the general requirement to air programming responsive to the needs and interests of their local communities.[7]

For example, both Congress and the FCC have established rules to ensure greater access to the airwaves for political candidates. In particular, broadcasters must provide "reasonable access" to candidates for federal public office and equal opportunities to opposing candidates of all candidate-users of airtime.[8] The Communications Act also limits the advertising rates candidates may be charged to the "lowest unit charge" paid by the station's "most favored commercial advertisers."[9]

Although the FCC's regulatory regime has been in place for nearly a century[10], as Charles Logan indicates, it is primarily premised on the constitutionally tenuous "scarcity" rationale set forth in Red Lion Broadcasting Co. v. FCC.[11] In this 1969 decision, the Supreme Court held that the Federal Communications Commission (FCC) did not violate the First Amendment in requiring a radio or television station to give reply time to people who were the subject of a personal attack or political editorial aired by the station. In reaching this decision, the Court emphasized that "there are substantially more

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[5] Logan 1687 (citing Communications Act of 1934 § 603; NBC v. United States, 319 U.S. 190, 215 (1943).)
[6] Id. at 216.
[7] En Banc Programming Inquiry, 44 F.C.C. 2303, 2312 (1960).
[8] 47 U.S.C. 312(a)(7), 315(a) (1994); 47 C.F.R. 73.1941, 73.1944 (1996)
[9] 47 U.S.C. 315(b) (1994); 47 C.F.R. 73.1942 (1996).
[10]. For history of broadcast regulation, see Mark S. Fowler & Daniel L. Brenner, A Marketplace Approach to Broadcast Regulation, 60 Tex. L. Rev. 207, 213-17 (1982).

individuals who want to broadcast than there are frequencies to allocate," and "because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium."[12]

The scarcity rationale has been criticized for years since, for example, newspaper publishing enjoys full First Amendment protection. [13] Thus, as Logan contends, the analytical weaknesses behind Red Lion's central rationale has led to its attack over the years by academia, politicians, the courts, and even the FCC led by a Republican chairman.[14] A number of Justices have indicated that they would like to reexamine the validity of Red Lion, though never specifically doing so.[15] The Court, however, declined to apply the scarcity rationale to the Internet, distinguishing it from the broadcasting medium and its history of regulation.[16] However, Congress still endorses spectrum scarcity to justify broadcast regulation.[17]

It is in this regulatory framework that Commissioner Furchtgott-Roth questions

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[11] Charles W. Logan, Jr. Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation, 85 Calif. L. Rev. 1687, 1746 (Dec. 1997), (citing 395 U.S. 367 (1969).)

[12] Id. at 388, 390.

[13] Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

[14] Thomas W. Hazlett, The Rationality of the U.S. Regulation of the Broadcast Spectrum, 33 J. L. & Econ. 133 (1990) (arguing that federal regulatory decisions were designed to generate profits for influential constituents.); The Dole Goal: "Get Government out of the way," Broadcasting & Cable, Oct. 14, 1996, at 29 (quoting presidential candidate Bob Dole as saying, "Sure, broadcasters should enjoy the same First Amendment rights as publishers. I know my opponent doesn't agree, but that is because he subscribes to the outdated 'scarcity principle.' Imagine telling broadcasters that they can't have equal footing with publishers because there is a scarcity of licenses, even though we all know there are far more TV and radio stations in any given market than there are newspapers."); Telecommunications Research & Action Ctr. v. FCC, 801 F.2d 501, 508 (D.C. Cir. 1986) (Judge Robert Bork argued that since scarcity is a universal fact for all economic goods, including newspapers and broadcasting, it can hardly explain regulation in one context and not another.); Syracuse Peace Council, 2 F.C.C.R. 5043, 5052-58 (1987).

[15] CBS, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 154 (1973) (Douglas, J., concurring) (stating that he would not support the scarcity rationale.); FCC v. League of Women Voters, 468 U.S. 364, 376 n. 11 (1984) (recognizing that the "scarcity" principle has come under criticism but refusing to overturn it and undo 50 years of FCC regulation without signal from the FCC or Congress.); Turner Broad. Sys., Inc. v. FCC, 114 S.Ct. 2445 (1994); Denver Area Educ. Telecomm. Consortium, Inc. v. FCC, 116 S.Ct. 2374 (1996).

[16] Reno v. ACLU, 117 S.Ct. 2329, 2344-45 (1997).

[17] S. Rep. No. 227-101, at 10-16 (1989) (enacting Children's Television Act over the Bush administration's First Amendment objections.)

the constitutionality of the FCC's authority to regulate political discourse.[18] Consequently, as Charles W. Logan, Jr. asserts, the Supreme Court will have to address this unstable "scarcity" and First Amendment legacy the FCC has inherited as the basis for its regulatory regime.[19]

Logan suggests that the FCC's regulatory broadcast regime can survive First Amendment constitutional scrutiny. He asserts that the Supreme Court's public forum doctrine[20] provides a basis for treating broadcasting as a limited public forum since broadcasting waves are public property licensed for use and not ownership by private entities. Consequently, regulation would be upheld so long as it is reasonable and viewpoint neutral.

He posits two theories to justify this rationale. Primarily, the First Amendment enables democratic self-government by providing the means of generating robust and open debate on public issues. Consequently, the government may play an active role in to generate and ensure that the public debate is open and robust. For this proposition, he relies heavily on the works of professors Cass Sunstein[21] and Owen Fiss[22]. In effect,

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[18] FCC 99-390 at 70-71 (Furchtgott-Roth separate statement of dissent and concurrence).

[19] Charles W. Logan, Jr. Getting Beyond Scarcity: A New Paradigm for Assessing the Constitutionality of Broadcast Regulation, 85 Calif. L. Rev. 1687, 1746 (Dec. 1997).

[20] Logan gives the following analysis of the pertinent category of public forums applicable to FCC broadcast regulations: "The second category is designated public forums, i.e., 'public property which the State has opened for use by the public as a place for expressive activity.' Perry Educ. Ass'n v. Perry Local Educator's Ass'n, 460 U.S. 37, 45 (1983). There are two kinds of designated public forums: limited and unlimited. A designated public forum of unlimited character is generally open to all comers, such as a municipal auditorium that a town has permitted the general public to use. Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 555 (1975). A limited designated public forum, by contrast, is "created for a limited purpose such as use by certain groups,...or for the discussion of certain subjects." Perry, 460 U.S. at 46 n.7 (citing Widmar v. Vincent, 454 U.S. 263 (1981) (student groups) and City of Madison Joint Sch. Dist. v. Wisconsin Pub. Employment Relations Comm'n, 429 U.S. 167 (1976) (school board business)). . . Limited public forums receive a lower level of scrutiny: A recent decision by the Court holds that content-based restrictions on speech in limited public forums are permissible provided they are "reasonable in light of the purpose served by the forum" and do not 'discriminate against speech on the basis of its viewpoint.' Rosenberger v. Rector & Visitors of the Univ. of Va., 115 S. Ct. 2510, 2517 (1995) (quoting Cornelius, 473 U.S. at 804-06)." 85 Calif. L. Rev. at 1708-09.

[21] Cass R. Sunstein, Democracy and the Problem of Free Speech 5 (1993); (2d ed. 1995).

these authors posit that the First Amendment emphasizes deliberate functions of free speech as essential to democracy. However, often the forces of majoritarian tyranny and the market's indifference to public interest programming[23] assert pressures for direct government intervention to promote the First Amendment political candor and thus democracy.

The Supreme Court has ratified the importance of broadcasting political discourse to the preservation of First Amendment democracy. The Supreme Court upheld the constitutionality of the lowest unit charge for television advertising and reasonable access to the medium provisions for political candidates. According to the Court, "Section 312(a)(7)...makes a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process."[24]

Secondly, Logan argues that broadcasters receive preferential treatment in being granted valuable rights to use the regulatory regime that other mediums do not enjoy. These valuable benefits are bestowed on broadcasters at the exclusion of others in return

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[22] Owen M. Fiss, The Irony of Free Speech 2-3 (1996); Owne M. Fiss, Why the State?, 100 Harv. L. Rev. 781 (1987).

[23] "These effects can be exacerbated in broadcasting markets, which earn revenue through selling advertising rather than through subscriber fees. To attract advertisers, a broadcaster places a premium on programming that generates the largest possible audience and targets preferred demographic groups. The nature of this market can result in the undersupply of certain types of socially beneficial programming, as well as a lack of diversity in programming. Government intervention tries to correct these market imperfections consistent with the First Amendment." Logan at 1720.

[24] Logan 1687 (quoting CBS, Inc. v. FCC, 453 U.S. 367, 396 (1981).)
The First Amendment interests of candidates and voters, as well as broadcasters, are implicated by 312(a)(7). We have recognized that "it is of particular importance that candidates have the...opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day." Indeed, "speech concerning public affairs is...the essence of self-government[.]" The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office."

for promoting important social goals in terms of greater access to the medium and attention to public interest programming[25]

Americans rely on television to get their news more than any other source.[26] Consequently, this poses a burden of accountability to the public interest not present to the same degree in other forms of media. A burden that is far outweighed by the advantages broadcasters have in their position with the American public and the government.

Instead of being charged a fee for their use of the spectrum, all current broadcasters have been awarded their licenses on the condition that they serve the public interest.[27] This presumptively favors incumbent licensees so long as they comport with public interest standards .[28] While the FCC has moved to an auction and bidding process for licensing, Congress clarified that the digital television channels incumbent television broadcasters will be receiving are exempt from the auction authority it has given the FCC in assigning new broadcast licenses in the future.[29] In addition to the receipt of spectrum, broadcasters have enjoyed other government-conferred benefits. These include statutory "must-carry" rights that entitle television broadcasters to carriage on local cable systems.[30]

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[25] Logan, 85 Calif. L. Rev. 1687

[26] FCC Notice of Proposed Rulemaking, FCC 99-360, 65 FR at 4211; Roper Starch Worldwide, America's Watching: Public Attitudes Toward Television (1995) (reporting results of public survey and stating that "television continues to be far and away Americans' primary and most credible source for news and information").

[27] Logan at 1727.

[28] Logan at 1729-34.

[29] See Section 3002 of the Balanced Budget Act of 1997, 143 Cong. Rec. H6029, H6031 (daily ed. July 29, 1997) (codified at 47 U.S.C.A. 309 (j)(2)(B)).

[30] Logan 1687: These must-carry provisions have been upheld by the Supreme Court against First Amendment attack by the cable industry. See Turner Broad. Sys., Inc. v. FCC, 117 S. Ct. 1174 (1997).

Newspaper publishers are not the recipients of any of these special governmental benefits in the allocation of the resources that go into communicating their speech. In contrast, broadcasters have enjoyed the fruits of a government allocations system that has granted them the exclusive right to use the broadcast spectrum. And these rights have proven to be extremely valuable. The National Telecommunications and Information Administration, of the Department of Commerce, has estimated the marketplace value of the current television and radio broadcast spectrum at $ 11.5 billion.[31] Furthermore, each existing television station has been awarded a second 6 MHz channel to use for its digital transmissions[32], with the total value of the spectrum that will be used for digital television estimated to be between $ 11 to $ 70 billion.[33]

The courts have, in turn, recognized this advantage and upheld regulatory public obligations.[34] Red Lion also recognized that the preferential treatment broadcasters receive in being granted their rights to use the spectrum consequently provides an independent basis for upholding regulations "requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves."[35]

The idea that broadcasters should give free air time to candidates in exchange for the spectrum set-asides is at the forefront of public policy debates in Congress regarding DTV. The set-aside prompted President Clinton to establish an Advisory Committee to

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[31] Logan at 1730 citing Nat'l Telecomm. & Info. Admin., U.S. Dep't of Comm., U.S. Spectrum Management Policy: Agenda for the Future, NTIA Special Pub. No. 91-23 (Feb. 1991).
[32] See Fifth Report and Order in MM Docket No. 87-268, FCC 97-116, PP 11-12, 17 (released Apr. 21, 1997)
[33] Logan at 1730.
[34] CBS, Inc. FCC, 453 U.S. 367 (1981).
[35] Red Lion Broad v. FCC, 395 U.S. 367, 389 (1969).

examine the public interest obligations of television broadcasters.[36] It has also led several prominent bi-partisan members of the community, including former President Jimmy Carter and Walter Cronkite, to advocate requiring broadcasters to provide free airtime to political candidates.[37]

Several public interest groups have emerged to address this issue, including the Civil Rights Forum, the Center for Media Education, and a Task Force on Campaign Reform chaired by Princeton University professor Larry M. Bartels and endorsed by Paul Taylor and Walter Cronkite through The Free TV for Straight Talk Coalition and Alliance for Better campaigns.[38] In effect, these groups have recognized that the United States, compared to other industrialized nations, is seriously lacking in its effective use of television as a medium for political discourse. They indicate that several broadcasters are decreasing the level of political information that is transmitted through television, and have lukewarm responses to voluntary free air time for candidates.

Conclusion and Suggestions

As indicated, the FCC is constitutionally free to regulate broadcaster's use of their licensing advantage to promote public discourse. Furthermore, market mechanisms have

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[36] Exec. Order No. 13,038, 62 Fed. Reg. 12,065 (1997).

[37] Alliance for Better Campaigns, www.bettercampaigns.org (endorsing the Vice President's Commission suggestion for 5 minute free air-time for campaigners).
In addition, Logan cites Broadcasting & Cable quoted Senator McCain as saying,

I believe that when [broadcasters] receive their licenses for use of extremely valuable spectrum, when they agree to act in the public interest, part of that obligation might be to provide political candidates with an opportunity to express their views....[Broadcasters] do use something that's owned by the public, just like the rafter uses the Grand Canyon. I believe the American taxpayer should have the benefit of that something.

Tough's the Word for John McCain, Broadcasting & Cable, Mar. 3, 1997, at 19.

[38] www.civilrightsforum.org/dtv/; www.bettercampaigns.org.

pressured broadcasters to forego free air time and other measures to increase political information to the public.

While the PIAC suggestions for voluntary efforts by broadcasters to promote democracy and the specific "five-minute" free soundbites for candidates is a start, the initiative does not go far enough. As several people in the industry, including Dan Rather, Walter Goodman, and Thomas Hazlett, have commented, this plan, or any like it is nothing more than meaningless (and monotonous) fluff that pays only lip service to democratic intellectual discourse.[39]

The FCC should rethink the "automatic" renewal of licensing and the exemption from the bidding process of incumbent licensees in renewing licensing for DTV spectrum. Such a policy would foster competition and introduce more, and hopefully better, news and politics-oriented broadcasting. In addition, the FCC should require that broadcasters provide free air time a day for at least 30 minutes during prime time, including use of time for debates, political analysis, etc. Furthermore, as an alternative, a "broadcast bank" could be created wherein each broadcaster would be required to "donate" two hours of prime time advertising in each two-year election cycle. Buy-out plans may also be feasible wherein a broadcaster can instead of airing political informational programming, provide equivalent monetary contribution to PBS or another government operated broadcasting system, not unlike the "pro bono" requirements of many attorneys who similarly are accountable to a higher level of public interest than other professionals.

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[39] www.bettercampaigns.org;
Thomas W. Hazlett, "Must Scream TV," www.reasonmag.com/9701/col.hazlett.html.

Emily L. Herman

Emily L. Herman

March 17, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Public Interest Obligations of Television Broadcasters Licensees
MM Docket No. 99-360; FCC 99-390; 65 Fed. Reg. 4211 (2000)

Dear Secretary Salas:

I am writing to comment on the public interest requirements the Commission should impose on digital broadcasters. As a law student and a concerned member of the public, I have focused my suggestions in the four areas that need the most protection and reform as we move into the digital age. Digital television will provide broadcasters with more programming options which should be used to better serve the citizenry. Imposing more public service requirements on digital broadcasters in these areas will give more Americans the opportunity to participate and prosper in the digital age. Therefore, I hope the Commission will take the incentive to impose more public interest requirements in the areas of education, political participation, community programs and services, and broadcasting safeguards.

Education

I believe digital technology should be used to serve the educational needs of both adults and children. Digital television broadcasters should be required to deliver

innovative and interactive programs and services from traditional educational institutions. These telecast requirements will enhance the work of schools, libraries, training centers, and distance education.[1] I believe the Federal Communications Commission should focus educational regulations for digital broadcasters in three areas: children's programs, lifelong learning, and access to technology.

Children's Programs:

In my opinion, broadcasters should be required to go far beyond the minimum of three hours per week of education programming now required under the 1990 Children's Television Act. Stations should provide a minimum of one hour per day of programming designed to serve children of all ages, including news and public affairs programming. I also believe that the Commission should continue to impose the six requirements defined in the 1996 rules for children's programming [(1) have a significant purpose of educating children 16 and under; (2) have a clearly stated, written educational objective; (3) have a target age group as the intended audience; (4) be at least 30 minutes in length; (5) be regularly scheduled; and (6) be broadcast

between the hours of 7:00 AM and 10:00 PMJ.[2] Moreover, I agree with the People for Better TV that digital broadcasters should be limited to no more than four commercials per hour during children's programs.[3] These requirements will be very beneficial to children in rural areas who would not otherwise receive any educational programs outside of school. Furthermore, the news and public affairs programming of these programs will help educate all children about the world them.

Lifelong Learning:

Broadcasters should also provide access to continuing adult education, college courses, and other educational opportunities for the public. This type of public interest programming will give individuals both the convenience and freedom to enrichment their educational capabilities.

Access to Technology:

As part of their community-service requirement, I believe broadcasters should provide schools and other nonprofit institutions with support for Internet access and

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[1] Report to the Federal Communications Commission, Advisory Committee on the Public Interest Obligations of the Digital Television Broadcasters (December 29, 1998).
[2] *A Field Guide to the Children's Television Act* (visited March 13, 2000) http://www.cme.org/ctatool/fguide.html.
[3] Letter from Albert Gore, Jr., Vice President, to William Kennard, Chairman, Federal Communications Commission (October 20, 1999).

other digital TV services. Being from a rural area, I have seen first-hand the financial difficulties some schools have providing technological innovations for students. Moreover, I endorse requiring digital broadcasters to support community technology centers, which provide essential access and training to those who might otherwise be excluded from full participation in the digital age.[4] Both school Internet and community technological support requirements will expand the facilities' educational capabilities that in turn will improve the opportunities available for students.

Political Participation

Current television practices have contributed significantly to the deterioration of the political process. The high cost of TV advertising time has required political candidates to raise larger and larger campaign funds which has made these candidates vulnerable to increasing special-interest influence. At a time when voter participation is at an all-time low, the television industry should be called upon to make a significant contribution to our democracy.[5]

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[4] *Public Interest Goals for Digital Television: An Opportunity to Reinvent TV* (visited on March 8, 2000) http://www.cme.org/pubin.html.

[5] *Id.*

Access to Political Information:

Digital technology provides new opportunities for broadcasters to connect views with a broad range of civic information resources, from background material on candidates and campaign platforms to legislative proposals, referenda, and other nonpartisan material. I support requiring local stations to work with state and community governments and agencies to develop local and state versions of C-SPAN and other political educational stations. These stations will aid the public in expanding their knowledge of government as well as serve as a watchdog on elected officials by keeping a regular watch on their governmental activities.

Free Air Time:

At a minimum, television broadcasters should be required to provide free airtime for political candidates, federal, state, and local. I join the Gore Commission and the Paxson Communications Corporation's proposal that digital stations be required to provide 5 minutes per night, during prime-time, for candidate-centered discourse in the 30 days before an election.[6] I believe the stations should

[6] Report to the Federal Communications Commission, Advisory Committee on the Public Interest Obligations of the Digital Television Broadcasters (December 29, 1998); Letter from Lowell Paxson, Chairman, Paxson Communications Corporation,

rotate which races are represented during this free airtime and should strive to give equal time to federal, state, and local candidates. This air time will give voters the opportunity to make more informed choices and will give exposure to less known, but otherwise qualified candidates.[7]

Community Programs and Services

Television stations are licensed to serve local communities. But except for local news, programming designed to serve communities has all but disappeared from broadcast television.[8] Digital technology makes possible new levels of community programs and services. With each station programming 5 to 6 additional new channels, the opportunity for serving community needs expands significantly.[9]

Public Affairs:

I support requiring digital stations to use some of their new channel capacity to provide public affairs programs that address issues and problems facing their

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to William Kennard, Chairman, Federal Communications Commissions (February 11, 2000).

[7] *Public Interest Goals for Digital Television: An Opportunity to Reinvent TV* (visited on March 8, 2000) http://www.cme.org/pubin.html.

[8] *Id.*

[9] *Digital Television: The Site* (last modified January 24, 2000) http://www.digitaltelevision.com/.

communities. Digital broadcasters should also telecast interactive forums that make possible participation from community members to address matters normally overlooked by the local news. This participation will enable decisions formulated by more members of the effective public. Moreover, community forums should promote local leaders who can better represent these areas in higher political arenas.

Public Accountability:

I believe digital broadcasters should place online full documentation of their plans to serve the public interest. I do not see this requirement as an added burden to broadcasters since many local stations now maintain Internet websites where this public interest information can easily be updated. Moreover, I support the Gore Commission's recommendation that digital broadcasters work with local newspapers and/or local program guides to enable viewers to identify public interest broadcasts.[10] These disclosure requirements will supply individuals with the information to fully benefit from digital technology programming.

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[10] Report to the Federal Communications Commission, Advisory Committee on the Public Interest Obligations of the Digital Television Broadcasters (December 29, 1998).

Broadcasting Safeguards

The expansion of channels and the introduction of interactivity will bring new forms of programming and advertising. Interactive marketing will be embedded within programming, further blurring the lines between advertising and editorial content. Personalized marketing directed at individual children could seriously threaten the privacy of both children and their families.

V-Chip:

Broadcasters must be required to ensure that the V-chip and the new TV ratings system, designed to protect children from inappropriate content, work effectively with digital programming. The Commission should ensure that the ratings system can take advantage of digital technologies to help parents and others block unwanted programming. These requirements are necessary in order to prevent a backward advance in protecting our children from viewing improper programming.

Privacy Protections:

Digital television will enable broadcasters to acquire vast information about consumer's personal choices in many areas. The Commission must develop rules to protect the privacy of viewers from inappropriate and manipulative data collection by digital broadcasters. These regulations also need to ban the sale of information about consumer's

personal program and product choices. The Commission must also develop new safeguards to protect the public from manipulative interactive advertising practices.[11] These advertising regulations are necessary to prevent consumers from falling prey to targeted programming and commercials by digital broadcasters.

Conclusion

As my suggestions reveal, I believe that the Federal Communications Commission should impose specific public interest obligations on digital television broadcasters. These requirements in education, political participation, community programs and services, and broadcasting safeguards will enable average Americans to benefit from digital television. I feel giving Americans the opportunity to take advantage of digital technology broadcasting should be the overall goal of the Federal Communications Commission.

Sincerely,

Glenda H. Pipkin

CC: Professor Glenn H. Reynolds

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[11] Letter from Mark Lloyd, Counsel, People for Better TV, to William Kennard, Chairman, Federal Communications Commission (November 16, 1999).

To: Magalie Roman Salas, Secretary-FCC

From: Dale E. Burdette

CC: Professor Glenn H. Reynolds

Date: 15 March 2000

Re: Comments on Debate over Minimum Public Interest Obligations

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Dear Secretary Salas,

I am responding to the FCC's request for comments on how broadcasters can best serve the public interest as they transition to digital transmission technology, 47 CFR Part 73 (January 26, 2000). Although I am a graduate student, I find time to watch a wide array of television programs. Since I believe my views will reflect similarly situated individuals', I am writing in opposition of proposals to elevate the minimum public interest obligations of broadcasters standard.

Introduction

I agree with both the Advisory Committee and People for Better TV on the notion that the advent of the Digital Era requires a review of the existing public interest obligations and their applicability to digital television. If there is going to be a minimum public interest standard, both broadcasters and the general public need to clearly understand the standard. Since content-neutral speech regulations are void on their face if explicitly vague, the standard must reasonable notice of what is required and what is prohibited.[1]

Economically, since competition in the marketplace produces the best results for society as a whole, in the absence of government intervention, I do not believe the

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[1] Reno v. ACLU, 521 U.S. 844.